REMARKS

Applicant respectfully requests reconsideration of this application in view of the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in substantially the same order in which the corresponding issues were raised in the Final Office Action.

Status of the Claims

Claims 1-6, 8, 9, 11, and 12 are currently amended to more clearly define pre-existing claim features. No claims are canceled. Claims 13-16 are added. No new matter has been added. Therefore, claims 1-16 are pending in the application.

Summary of the Office Action

Claims 1-4, 7, 10 and 12 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,467,233 to Maliszewski et al. (hereinafter "Maliszewski").

Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maliszewski in view of U.S. Patent No. 4,272,929 to Hanson (hereinafter "Hanson").

Claims 8, 9 and 11 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maliszewski in view of U.S. Patent No. 5,513,477 to Farber (hereinafter "Farber").

Response to Rejections under 35 U.S.C. § 103(a)

The Examiner rejected claims 1-4, 7, 10 and 12 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maliszewski. Applicants respectfully request withdrawal of these rejections because the cited reference fails to teach or suggest all of the features of the claims.

CLAIMS 1-4, 7, 10 and 11

Claim 1 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maliszewski. Applicants respectfully submit that claim 1 is patentable over the cited

reference because the cited reference does not teach or suggest all of the features of the claim. Claim 1, as amended, recites:

> A modular kit for a tower of a wind energy turbine, comprising:
>
> **a first conical tower segment comprising a steel tube having a predetermined length,**
>
> **a second conical tower segment comprising a steel tube having a predetermined length, wherein the first conical tower segment is to be coupled to the second conical tower segment in an assembled condition, the diameter of the first conical tower segment at a lower end being equal to the diameter of the second conical tower segment at an upper end**, and
>
> a first variable-length cylindrical tower segment comprising a steel tube having a length that can be varied between a predetermined minimum length and a predetermined maximum length,
>
> wherein the length of the first variable-length cylindrical tower segment can be adapted to the necessary height of the tower between its minimum height and its maximum height, the minimum height being the sum of the predetermined lengths of the first and second conical tower segments and the minimum length of the first variable-length cylindrical tower segment, and the maximum height being the sum of the predetermined lengths of the first and second conical tower segments and the maximum length of the first variable-length cylindrical tower segment. (Emphasis added).

The Examiner states that "a first conical tower segment" and "a second conical tower segment" in claim 1 are respectively taught by Maliszewski in his teaching of "56, figure 2" and "58, figure 2," and "a first variable-length cylindrical tower segment" in claim 1 is taught by Maliszewski in his teaching of "22, figure 2." (Office Action 04/14/2009, page 3). The elements 56, 58, and 22 in figure 2 are described in Maliszewski's patent as "the *conical transition ring* 56 and *conical transition ring* 58" and "the *bottom ring* 22." (Maliszewski, col. 3, line 58; col. 2, line 59, emphasis added). Applicants respectfully submit that the conical transition rings 56 and 58 of Maliszewski do not constitute the claimed first and second conical tower segments because claim 1, as amended, recites that "the first conical tower segment is to be coupled to the second conical tower segment in an assembled condition, the diameter of the first conical tower segment at a lower end being equal to the diameter of the second conical tower segment at an upper end." The conical transition rings 56 and 58 are not coupled together in an

assembled condition, but rather are separated by the rings 38-50, as illustrated in figures 4 and 5. As such, Applicant respectfully submits that the cited reference fails to teach all the features of the claim. Accordingly, Applicants respectfully submit that claim 1 is patentable over the cited reference.

Given that claims 2-4, 7, 10 and 12 directly or indirectly depend from independent claim 1, which is patentable over the cited reference, Applicants respectfully submit that dependent claims 2-4, 7, 10 and 12 are also patentable over the cited reference.

Accordingly, Applicants respectfully request that the rejections of claims 1-4, 7, 10 and 12 under 35 U.S.C. § 103(a) be withdrawn.

CLAIMS 5 and 6

Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maliszewski in view of Hanson. Applicants respectfully submit that claims 5 and 6 are patentable over the combination of cited references because the combination does not teach or suggest all of the features of the claims.

Claims 5 and 6 directly or indirectly depend from the independent claim 1. As discussed above, Maliszewski fails to teach or suggest all of the features of the claim 1. Hanson does not cure those deficiencies. Accordingly, Applicants request that rejection of claims 5 and 6 under 35 U.S.C. §103(a) be withdrawn.

CLAIMS 8, 9 and 11

Claims 8, 9 and 11 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Maliszewski in view of Farber. Claims 8, 9, and 11 directly or indirectly depend from the independent claim 1. As discussed above, Maliszewski fails to teach or suggest all of the features of the claim 1. Farber does not cure those deficiencies. Accordingly, Applicants request that rejection of claims 8, 9, and 11 under 35 U.S.C. §103(a) be withdrawn.

NEW CLAIM 13

Applicants respectfully submit that the newly added claim 13 is patentable and it is supported by the originally filed application, for example, at page 5, lines 17-25 and 27-31, page 7, lines 7-19, and page 8, lines 11-17, Figures 4 and 5. Claim 13, recites:

A modular kit for a tower of a winder energy turbine, comprising:

a first conical tower segment comprising a steel tube having a predetermined length;

a second conical tower segment comprising a steel tube having a predetermined length, **wherein the first conical tower segment is to be coupled to the second conical tower segment in an assembled condition, the diameter of the first conical tower segment at a lower end being equal to the diameter of the second conical tower segment at an upper end**;

a first variable-length cylindrical tower segment comprising a steel tube having a length that can be varied between a predetermined minimum length and a predetermined maximum length, wherein the second conical tower segment is to be coupled to the first variable-length cylindrical tower segment in the assembled condition, the diameter of the second conical tower segment at a lower end being equal to the diameter of the first variable-length cylindrical tower segment; and

a further tower segment, wherein the first variable-length cylindrical tower segment is to be coupled to the further tower segment in the assembled condition, the diameter of first variable-length cylindrical tower segment being equal to the diameter of the further tower segment at an upper end,

wherein the minimum height of the tower is the sum of the predetermined lengths of the first and second conical tower segments, the minimum length of the first variable-length cylindrical tower segment and the length of the further tower segment, and

wherein the maximum height of the tower is the sum of the predetermined lengths of the first and second conical tower segments, the maximum length of the first variable-length cylindrical tower segment and the length of the further tower segment, **the maximum height exceeding approximately eighty meters**.

As described above with respect to claim 1, Maliszewski fails to teach the feature **"wherein the first conical tower segment is to be coupled to the second conical tower segment in an assembled condition, the diameter of the first conical tower segment at a lower end being equal to the diameter of the second conical tower segment at an upper end."**

Moreover, Maliszewski teaches towers having a height up to 80 meters using fourth sections. (Maliszewski, col. 3, lines 22-27). Applicant respectfully submits that claim 13 recites "**the maximum height exceeding approximately eighty meters**." As such, Maliszewski fails to teach at least this feature of the claim.

With respect to claims 5 and 15, claim 15 recites " a further tower segment of reinforced concrete" and "wherein the further tower segment comprises prestressed-concrete," respectively. In Maliszewski, the door opening 21 is placed on the bottom ring 22, which is made of a steel plate. (Maliszewski, Figure 1 and Figure 4). Maliszewski

fails to teach the features of "reinforced concrete" or "prestressed-concrete," as recited in claims 5 and 15. Even though Hanson teaches a tower to be anchored by pouring cement into a hole that holds lowest section of the tower (Hanson, Abstract, Figures 2 and 3), Hanson's tower itself does not include any concrete segment and the cement is merely used to anchor the tower. Even if, for the sake of argument, the cement in the hole as taught by Hanson is considered as a concrete segment of the tower, the cement, as shown in Figure 2 and Figure 3, does not include any openings. Thus, Maliszewski and Hanson, either alone or in combination, do not teach or suggest all of the features of claim 13. Accordingly, Applicants respectfully submit that claim 13 is patentable over the cited references.

CONCLUSION

It is respectfully submitted that in view of the amendment and remarks set forth herein, the rejections have been overcome. If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Kevin Grange at (408) 720-8300.

If there are any additional charges, please charge them to Deposit Account No. 02-2666.

Respectfully submitted,

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